

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RASHID EL MALIK,
ROSALIND EL MALIK

v.

CITY OF PHILADELPHIA, ET AL.

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CIVIL ACTION

NO. 06-1708

MEMORANDUM

Padova, J.

March 26, 2007

In this *pro se* civil rights suit brought under 42 U.S.C. § 1983, Plaintiffs Rashid El Malik and Rosalind El Malik allege that the City of Philadelphia and several City employees violated their substantive and procedural due process rights when the City demolished three structures they owned. Presently before the Court are cross motions for summary judgment. Because we find that the Plaintiffs received constitutionally adequate notice and the Defendants' actions do not shock the Court's conscience, we deny the Plaintiffs' motion and grant the Defendants' motion.

I. UNDISPUTED FACTS

On December 19, 2005, Plaintiffs filed a Complaint in state court against the following defendants, all of whom are officials or employees with the City of Philadelphia Licenses and Inspections Department ("L&I"): Deputy Commissioner Eileen Evans, Manager of the Neighborhood Services Division Stanley Robinson, Chief of Contractual Services Daniel Quinn, and Inspector Norman Mason. The City of Philadelphia is also a named defendant. Defendants removed

this action to Federal Court. The Complaint sets forth claims under 42 U.S.C. § 1983 for violations of substantive and procedural due process under the Fourth and Fourteenth Amendments to the United State Constitution. Plaintiffs contend that their substantive and procedural due process rights were violated when they did not receive notice that their properties located at 28, 29 and 30 North 59th Street were imminently dangerous and that L&I would undertake steps to remediate the problem if Plaintiffs did not. (Compl. Ex. C, p. 6-11.)

A. The City of Philadelphia Neighborhood Transformation Initiative Program

L&I inspects buildings that might be unsafe or dangerous in response to complaints received from the general public, or at the request of Philadelphia City Council members, pursuant to the Neighborhood Transformation Initiative (“NTI”) program. In response to such requests and complaints, inspectors from L&I visit the properties in question to inspect the condition of the properties. (Mason Decl. ¶ 6.) L&I is one of several City of Philadelphia agencies that administers the NTI program. (Id. ¶ 9.) The sole purpose of the NTI program is to try to identify and clean blighted areas and blighted buildings in the City of Philadelphia. (Id. ¶ 13.)

As part of the NTI program, surveys are conducted at the request of the Philadelphia City Council. The surveys are undertaken to identify blighted areas within the City that contain dangerous, unsafe, or vacant buildings. (Id. ¶14.) During a survey of a given area, L&I inspectors will go out and inspect suspected buildings that are dangerous, unsafe, or vacant. (Id. ¶ 15.) It is an inspectors duty to inspect the property and notice it for any code violations. (Quinn Decl. ¶8.) After an inspection is completed, it is the inspector’s duty to post an orange violation notice on the property that alerts the owner to the violations. (Id. ¶ 9.) The inspector then enters a description of the violations for the property into a computer system. (Id. ¶ 10.) The clerical staff at L&I are then

directed to take the information that has been entered into the computer system and send out violation notices to the owners at their address listed in the records of the Board of Revision of Taxes. (Id. ¶ 11.) If additional addresses for the property owner are known, the violation notices are also sent to those addresses. (Id. ¶ 12.) The violation notices are sent via regular mail and certified mail. (Id. ¶ 13.)

An NTI project is a lengthy process that can take many months or even years to complete. (Mason Decl. ¶ 22.) An NTI project includes the securing of the necessary funds from the City, the identification of the properties to be demolished, proper notice of the violations to the property owners, and a bidding process to secure a demolition contractor. (Id. ¶ 23.)

Plaintiffs' properties, located at 28, 29, and 30 North 59th Street, were demolished pursuant to the NTI program. (Id. ¶ 12.) The area surrounding the properties is a blighted neighborhood. Rashid El Malik Dep. 5:6-19.) Plaintiffs admit that the buildings immediately surrounding their own buildings were all dangerous to the community because the property owners were not taking care of them. (Id. 55:11-18.) As a result of inspections conducted on the properties at 28, 29 and 30 North 59th Street, it was determined that the buildings were imminently dangerous and posed a risk of danger to the general public. (Quinn Decl. ¶ 14.) L&I's Policy Statement defines an imminently dangerous structure as one whose partial or total collapse "will likely occur within ninety (90) days and as such endangers human life." (Pl. Ex. 9.)

B. The Violations on Plaintiffs' Properties and the Notices They Received

The records contained within the L&I files indicate that in November of 2003 an inspection was conducted of the Plaintiffs' properties at 28, 29 and 30 North 59th Street. (Quinn Decl. ¶ 14.) The inspection revealed that the structures on all three properties were in imminent danger of

collapse and posed a risk of danger to the general public. (Id. ¶ 15.) The violation notice for 28 North 59th Street states that the floor/ceiling assembly and the roof had deteriorated and was in imminent danger of collapse. (Def. Ex. 8.) The violation notice for 29 North 59th Street states that the floor/ceiling assembly had deteriorated and was in imminent danger of collapse, that a side wall was missing brickwork and was in imminent danger of collapse, and that the roof of an attached garage had collapsed and was in imminent danger of further collapse. (Def. Ex. 9.) The violation notice for 30 North 59th Street states that the roof of the main structure had deteriorated and was in imminent danger of collapse, and that the roof on the porch had partially collapsed and was in imminent danger of further collapse. (Def. Ex. 10.) The records contained within the L&I files for 28, 29 and 30 North 59th Street indicate that the violation notices for each property were sent to the Plaintiffs at the two following addresses: (1) 1320 Via Margarita, Palos Verdes Estate, CA. 902743, and (2) 2306 Palos Verdes Drive, Palos Verdes Estate, CA. 90274. (Quinn Decl. ¶¶ 16-17.)

All three of the violation notices dated November 29, 2003 have the name of Defendant Eileen Evans as the sender. (Def. Ex. 8-10.) These notices were computer generated; Evans did not prepare, read, or sign the letters. (Evans Dep. 6:16-24.) At the time the notice letters were prepared and sent, Evans held the position of Director of the Contractual Services Unit. (Def. Ex. 8-10.) Defendant Quinn currently holds that position. (Quinn Decl. ¶ 2.) The computer generated violation notices were prepared from the information entered by the inspector who inspected the property. (Id. ¶ 10.) The clerical staff at L&I then sent the notices out by regular and certified mail to the owners at their address listed in the Board of Revision of Taxes records. (Id. ¶¶ 11-13.)

As of 2006, the address at 2306 Palos Verdes Drive, Palos Verdes was the address listed for the Plaintiffs in the Board of Revision Taxes file maintained by the City of Philadelphia. (Id. ¶ 18;

Def. Ex. 7.) The violation notices dated November 29, 2003 informed the Plaintiffs that their properties were in an imminently dangerous condition and that immediate action had to be taken to repair the conditions or demolish the structures. (Quinn Decl. ¶19; Def. Ex. 8-10.) The violation notices dated November 29, 2003 also informed Plaintiffs that failure to abide by the notices would subject their property to demolition by the City at the owner's expense. (Quinn Decl. ¶ 20; Def. Ex. 8-10.) The notices informed the Plaintiffs that they had 5 days from the date of the notice to appeal the violations, by applying at the Boards Administration office in the Municipal Services Building. (Def. Ex. 8-10.) The notices also provided a phone number to call. (Id.) Appeals are handled by Boards Administration. (Evans Dep. 35:6-24.) Deputy Commissioner Evans does not have any involvement or authority over the appeals process. (Id. 35: 6-24.)

The L&I files for 28, 29 and 30 North 59th Street do not contain any returned mail marked "undeliverable" that would indicate that the violation notices sent to the Plaintiffs were not successfully delivered. (Quinn Decl. ¶ 21.) The files also do not contain any certified mail return receipt cards evincing that the Plaintiffs signed for the certified letters mailed to them on November 29, 2003. (Pl. Ex. 6.)

The files contain color photos of the Plaintiffs' properties. (Quinn Decl. ¶ 24.) The file for 28 North 59th Street contains photos dated March 1, 2005 depicting the front of the property posted with an orange danger notice stating that the property was imminently dangerous. (Id. ¶ 27.) One of the photos shows that the date of the orange notice is March 1, 2005. Asked to explain why the orange danger notice is dated 2005 although the inspections occurred in 2003, Deputy Commissioner Evans stated that sometimes posters are torn down and need to be replaced; sometimes the weather causes the poster to come down; also the City may have received additional complaints causing an

additional inspection to have taken place. (Evans Dep. 48:17-25.) Other photos in the file for 28 North 59th Street show a building that is unsealed, has foundation cracks, and is missing bricks, but there is no indication that they are photos of the subject building. (Def. Ex. 11.) Mr. El Malik testified that the pictures in the file are not photos of 28 North 59th Street. (Rashid El Malik Dep. 55:4-8. The Violation Notice for 28 N. 59th Street details that the floor/ceiling assembly and the roof are deteriorated and in imminent danger of collapse. (Def. Ex. 8)

The L&I file for 29 North 59th Street contains undated photos showing the side wall of the building with boarded up windows, and a partially collapsed roof. (Def. Ex. 12.) The file also contains photos showing that the corner wall of the building was posted with an orange danger notice dated November 13, 2003. (Id.) The Violation Notice details that the floor/ceiling assembly and roof was in imminent danger of collapse, and a wall had loose or missing brickwork and was in imminent danger of collapse. (Def. Ex. 9.)

The L&I file for 30 North 59th Street contains undated photos showing the outside of 30 North 59th Street. (Def. Ex. 13.) The photos show that the front of the building was sealed but that the lintel over the doorway had deteriorated. (Id.) The front entrance way to the property is posted with an orange danger notice.¹ The Violation Notice details that the floor/ceiling assembly and roof had deteriorated and was in imminent danger of collapse. (Def. Ex. 10.)

C. Plaintiffs' Lack of Notice Claim

The Plaintiffs come to Philadelphia at least four times a year to check on their properties.

¹Although the date of the orange danger notice is partially obscured, the date written on the notice is clearly "11/13/03." (Def. Ex. 12.) The Notice is in the same handwriting as the Notice on Number 29, which contains the same date. The top of the number "11" and part of the number "13" are visible in the photo.

(Rosalind El Malik Dep. 30:9-13.) In early February 2005, Plaintiffs flew from California to Philadelphia to visit their properties. (Rashid El Malik Dep. 18:22-25.) Plaintiffs saw orange markings on the buildings and sidewalks and contacted City Hall to inquire if there was a problem with their properties. (Id. 23:9-22.) According to Mrs. El Malik, prior to that time, there were no postings on the properties. (Rosalind El Malik Dep. 34:2-8.) After they returned to California, Mr. El Malik spoke with Norman Mason, an L&I building inspector. (Rashid El Malik Dep. 24:3-13.) Mason informed him that the properties were scheduled to be demolished. (Id. 24:19-22.) Mr. El Malik told Mason that he did not receive violation notices. (Id. 24:23-24.) Mr. Mason informed him that the notices were sent to the 2306 Palos Verdes Drive address, which, Mr. El Malik told Mason, was their former address. (Id. 24:25-25:8.) Mason then informed him that there is nothing he could do, and he referred Mr. El Malik to his supervisor, Daniel Quinn. (Id. 25:13-16.) Quinn also told Mr. El Malik that there was nothing he could do to stop the demolition because the contract for the demolition had already been approved and the demolition was scheduled. (Id. 26:2-24.) Quinn advised him that the only way to stop the demolition was through court intervention. (Id.) Quinn advised him to see a lawyer. (Id. 31:3-9.)

After speaking with Quinn, Mr. El Malik spoke with Quinn's supervisor Stanley Robinson, who told him he would see what he could do. (Id. 27:7-14.) El Malik then asked Robinson for the name of his supervisor. Robinson told him that his supervisor was Deputy Commissioner Evans. (Id. 27:15-19.) Evans had the authority to stop a demolition. (Evans Dep. 4:6-7.) Mr. El Malik then called Evans and left her a voice mail explaining his problem. (Rashid El Malik Dep. 27:20-24.) Mr. El Malik did not receive a return call. (Id. 27:25-28:2.) He then wrote a letter dated March 3, 2005, addressed to Robinson, with copies sent to Evans, Quinn, and Mason, wherein he confirmed

in writing his conversation with Robinson from the day before. (Id. 28:2-8; Def. Ex. 14.) In the letter, Plaintiffs stated that they never received the violation notices. They requested that the demolition be terminated and requested a meeting with the inspector who condemned the property. They also stated that if they could not repair the properties, they would demolish them at their own expense. (Def. Ex. 14.)

Evans denied getting the El Maliks' letter, but stated that if she had she would not have stopped the demolition because the letter had no bearing on the structural integrity of the buildings. (Evans Dep. 8:10-16.) She stated she knew of a case where demolition had been stopped by the City, but that was because the property owner came in to secure a building permit and, unlike with the El Maliks' property, no demolition contract had yet been awarded. (Evans Dep. 27:11-15.) She confirmed Quinn's statement that, once a contract is awarded, an owner needs to seek a temporary restraining order from the courts to stop the demolition. (Id. 31:3-6.) At her deposition, Evans was shown pictures of the 30 North 59th Street property. She admitted that the pictures did not show the structural damage to the building's roof identified in the inspection report. (Id. 43:9-22.) At his deposition, Quinn was shown pictures of the 28 North 59th Street property. He admitted that the pictures did not show the structural damage described in that property's violation notice and could not explain why no pictures showing the damage were in the file. (Quinn Dep. 26:15-27:1.)

Around the same time that Mr. El Malik wrote the March 3, 2005 letter, he contacted an attorney in Philadelphia to see if the attorney could intervene. (Id. 31:3-19.) However, Plaintiffs never retained the attorney. (Id. 31:22-25.) There is no evidence that they ever filed for an injunction to stop the demolition. In April 2005, the properties were demolished. (Id. 34: 22-25.)

All the named Defendants aver that they had no involvement in the initial inspection of the

Plaintiffs' properties, no involvement in citing the Plaintiffs' properties for violations, and no involvement in sending out the violation notices to the Plaintiffs. (Mason Decl. ¶¶ 28-30; Quinn Decl. ¶ 35-36; Robinson Decl. ¶¶ 6-8; Evans Decl. ¶¶ 7-10.) Plaintiffs have not come forward with any evidence to refute these contentions.

II. SUMMARY JUDGMENT STANDARD

A Court may grant a Motion for Summary Judgment only “if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). An issue is “genuine” if the evidence is such that a reasonable jury could return a verdict for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A factual dispute is “material” if it might affect the outcome of the case under governing law. Id.

A party seeking summary judgment always bears the initial responsibility for informing the district court of the basis for its motion and identifying those portions of the record that it believes demonstrate the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). After the moving party has met its initial burden, “the adverse party’s response, by affidavits or otherwise as provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.” Fed. R. Civ. P. 56(e). “Speculation, conclusory allegations, and mere denials are insufficient to raise genuine issues of material fact.” Boykins v. Lucent Technologies, Inc., 78 F. Supp. 2d 402, 407 (E.D. Pa. 2000). Indeed, evidence introduced to defeat or support a motion for summary judgment must be capable of being admissible at trial. Callahan v. A.E.V., Inc., 182 F.3d 237, 252 n.11 (3d Cir. 1999) (citing Petruzzi’s IGA Supermarkets, Inc. v. Darling-Delaware

Co., Inc., 998 F.2d 1224, 1234 n.9 (3d Cir. 1993)). The Court must view the evidence presented on the motion in the light most favorable to the opposing party. Anderson, 477 U.S. at 255.

III. PLAINTIFFS' SUBSTANTIVE DUE PROCESS CLAIM

The elements of a substantive due process claim are (1) the deprivation of a fundamental property interest, Nicholas v. Pennsylvania State Univ., 227 F.3d 133, 140 (3d Cir. 2000); and (2) governmental deprivation of that property interest in a manner that is arbitrary or shocks the conscience. See United Artists Theatre Circuit, Inc. v. Twp. of Warrington, 316 F.3d 392, 399 (3d Cir. 2003) (“[T]he substantive component of the Due Process Clause is violated by executive action only when it can properly be characterized as arbitrary, or conscience shocking, in a constitutional sense.” (quoting County of Sacramento v. Lewis, 523 U.S. 833, 847 (1998)) (internal quotations omitted)). The use and enjoyment of real property qualifies for protection under substantive due process. See DeBlasio v. Zoning Bd. of Adjustment, 53 F.3d 592, 600-01 (3d Cir.1995), overruled on other grounds by United Artists Theatre Circuit, 316 F.3d at 399-402; but see Greenbriar Village, L.L.C. v. Mountain Brook City, 345 F.3d 1258, 1262 (11th Cir. 2003) (citing Board of Regents v. Roth, 408 U.S. 564, 577 (1972)) (holding that property interests like those a home owner enjoys in his residence are created and defined by state law rather than the Constitution); Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 229 (1985) (Powell, J., concurring) (“While property interests are protected by procedural due process even though the interest is derived from state law rather than the Constitution . . . substantive due process rights are created only by the Constitution.”).

The Defendants argue that it is well established that the state has the right to regulate the use and conditions of property to ensure the public safety and health, and that the public interest demands that dangerous conditions be prevented or abated. See Keystone Bituminous Coal Ass’n. v.

DeBenedictis, 480 U.S. 470, 491-92 (1987) (holding that abating a public nuisance is not a taking under the Fifth Amendment because “[l]ong ago it was recognized that ‘all property in this country is held under the implied obligation that the owner’s use of it shall not be injurious to the community,’ . . . and the Takings Clause did not transform that principle to one that requires compensation whenever the State asserts its power to enforce it.”) (internal citation omitted); Camara v. Municipal Court of San Francisco, 387 U.S. 523, 537 (1967) (holding that code inspections aimed at securing city-wide compliance with minimum physical standards for private property, but conducted without a warrant procedure, were reasonable even though they lacked the traditional safeguards which the Fourth Amendment guaranteed, because “the public interest demands that all dangerous conditions be prevented or abated.”). They argue that the L&I files show the properties were in an imminently dangerous condition and that the Plaintiffs have come forward with no evidence, other than their own assertions, that the properties were not in an imminently dangerous condition. Accordingly, they submit that the demolition of the structures does not shock the conscience.

Plaintiffs’ motion, while focusing almost exclusively on the procedural due process claim, also asserts that L&I’s Policy Statement defines an imminently dangerous structure as one whose partial or total collapse “will likely occur within ninety (90) days and as such endangers human life.” (Pl. Ex. 9.) Since the properties were declared imminently dangerous in 2003, yet stood until demolished in 2005, they contend that the 2003 declaration was arbitrary. We cannot agree. Even though the buildings did not completely collapse in the interim between their being posted and their eventual demolition, the L&I files establish that the City did not act arbitrarily. First, the L&I files show that parts of each structure had already partially collapsed when they were inspected in 2003.

Additionally, the City’s definition of “imminently dangerous” does not require the code official to predict that a building’s collapse will occur with absolute certainty. Rather, the classification of “imminently dangerous” is made, *inter alia*, upon a finding that part of the building “is likely to fail,” that a portion of the structure “is of obvious reduced strength,” or that the structure “is likely to partially or completely collapse” due to dilapidation, deterioration or decay. See Phila. Prop. Maintenance Code § 308.1(R)(1)-(6). Although the City concedes that there are problems with the L&I files – specifically, the photos for Number 28, which although showing a damaged structure, do not identify that the structure shown is actually Number 28, and the file for Number 30, which does not contain photos depicting the damage described in the Violation Notice – with no counter evidence from the Plaintiffs, the Violation Notices and deposition testimony establish that there is no genuine issue that the buildings were imminently dangerous. The demolition of imminently dangerous structures in accordance with City procedures does not shock the Court’s conscience. Accord Davet v. City of Cleveland, 456 F.3d 549, 552 (6th Cir. 2006) (affirming district court’s holding that plaintiff’s substantive due process claim failed because he could not establish that municipal actions taken pursuant to a valid condemnation order and in accordance with the procedures mandated by city and state law shocked the conscience or were arbitrary and capricious). Accordingly, the City is entitled to summary judgment on the substantive due process claim.²

²We also note that in Albright v. Oliver, 510 U.S. 266, 273 (1994), the United States Supreme Court held that “[w]here a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of ‘substantive due process,’ must be the guide for analyzing these claims.” Accord Graham v. Connor, 490 U.S. 386, 395 (1989). “The seizure of property implicates two explicit textual sources of constitutional protection, the Fourth Amendment and the Fifth.” United States v. James Daniel Good Real Prop., 510 U.S. 43, 50 (1993) (noting that the Fourth Amendment applied to the seizure of a four-acre parcel of land with a house); Soldal v. Cook County, Illinois, 506 U.S. 56, 70 (1992) (holding that a “seizure . . . occurs when ‘there is some meaningful

Plaintiffs also contend that the individual Defendants had the authority to stop the demolition, but arbitrarily refused to do so after the Plaintiffs sent their March 3, 2005 letter, alleging that they had no notice of the pending demolition. This contention has no support in the summary judgment record. Deputy Commissioner Evans testified that although she has authority to stop a demolition, she never received the letter, and even if she had she would not have stopped the demolition because the letter provided no basis for such action. Unlike the other situation she described, these Plaintiffs took no action to secure a building permit and proposed no plan to remediate the danger. Mason told the Plaintiffs he had no authority to stop the demolition. Quinn also told them that there was nothing he could do to stop the demolition because the contract for the demolition had already been approved, the demolition was scheduled, and that the only way to stop the demolition was through court intervention. Although Stanley Robinson told them he would see what he could do, there is nothing in the record to show that he had authority to stop the demolition or acted in an arbitrary manner. Accordingly, we grant the Defendants' summary judgment motion on the substantive due process claim.

interference with an individual's possessory interests in that property'") (quoting United States v. Jacobsen, 466 U.S. 109, 113 (1984)); Armendariz v. Penman, 75 F.3d 1311, 1319-20 (9th Cir. 1996) (holding that the Fourth Amendment and procedural due process claims preempted substantive due process claim based on seizure of property). Although Plaintiffs do allege that Defendants acted arbitrarily and oppressively in the demolition of their buildings, their claim fits squarely within the contours of the Fourth Amendment's protections (applicable to the Defendants via the Fourteenth Amendment). See Soldal, 506 U.S. at 61-62. Where, as here, when the government demolishes a building, a "seizure" results within the explicit meaning of the Fourth Amendment. See id.; Suss v. ASPCA, 823 F. Supp. 181, 186-87 (S.D.N.Y. 1993) (holding that the demolition of an outer wall of a private building constitutes a seizure).

Accordingly, because Plaintiffs' claim is grounded in an explicit textual source, their substantive due process claim could not proceed even if they did meet the summary judgment burden to come forward with evidence of conscience-shocking conduct.

IV. PLAINTIFFS' PROCEDURAL DUE PROCESS CLAIM

Procedural due process normally requires that a governmental deprivation of life, liberty or property be preceded by notice and opportunity for hearing appropriate to the nature of the case. Logan v. Zimmerman Brush Co., 455 U.S. 422, 428 (1982). As there is no real question that the Plaintiffs' ownership interest in real property merits the procedural protections of due process of law, see James Daniel Good Real Property, 510 U.S. at 49, the only remaining question is whether the Plaintiffs have come forward with sufficient evidence to show constitutionally inadequate notice.

"Due process does not require that a property owner receive actual notice before the government may take his property." Jones v. Flowers, 547 U.S. 220, 126 S.Ct. 1708, 1714 (2006). What is required is notice "reasonably calculated under all the circumstances to apprise interested parties of the pendency of the action and afford them opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950). The notice is "constitutionally sufficient if it was reasonably calculated to reach the intended recipient when sent." Jones, 547 U.S. at ___, 126 S.Ct. at 1714 (holding that when the state sent notice of a tax sale but it was returned unclaimed, it had to take additional reasonable steps to attempt to provide notice to the property owner before selling the property, if it was practicable to do so).

The Defendants argue that they are entitled to summary judgment because notice was properly provided to Plaintiffs under section A-502.4 of the Philadelphia Administrative Code, which provides:

Method of service: A notice of violation shall be deemed to be properly served if a copy thereof is delivered to such persons prescribed in Section A-502.3 by one or more of the following:

1. Personally;
2. By first class mail to the last known residence or business

- address;
3. By certified or registered mail to the last known residence or business address, return receipt requested;
 4. By leaving it in the possession of an adult member of the person's family;
 5. By leaving it in the possession of any adult in charge of the premises or person's place of business; or
 6. If no address is known or the mail is returned indicating no delivery, a copy of the notice shall be posted in a conspicuous place at the entrance or avenue of access to the premises in violation and such procedure shall be deemed the equivalent of personal notice.

Defendants assert that the L&I file demonstrates that the properties were posted with orange notice posters, and that notices for all three properties were sent by regular and certified mail to the two addresses on file for the Plaintiffs: 1320 Via Margarita, Palos Verdes Estates, California, the address where the Plaintiffs actually resided at the time the notices were mailed; and 2306 Palos Verdes Drive, Palos Verdes, California, the address listed in the City's tax data base for the Plaintiffs. There is no evidence that the first class mailings were ever returned undeliverable. While Defendants acknowledge that there are no certified mail return cards in the L&I file, they contend that the lack of the return cards is not a constitutional violation, so long as they can show other adequate notice. Finally, the Defendants assert that it is undisputed that the Plaintiffs had actual prior notice of the pending demolitions when they visited their properties and saw markings on the buildings.

Plaintiffs make several contentions in their summary judgment motion on how the Defendants violated their procedural due process rights. They argue that Phila. Admin. Code § A-502.4 requires that the City use **all six methods** of notice listed in the section. They assert that it is undisputed that the L&I records do not contain the certified return cards to prove that the 2003 notice was sent by certified letter. They also assert the L&I records do not contain pictures of the posted

violations on their premises in 2003. Finally, they argue that the City has produced no evidence to show that the Plaintiffs were given an opportunity to appeal the demolition order.

Plaintiffs' first argument, that they were denied due process because the Administrative Code required that the City use all six methods of notice listed in § A-502.4, is frivolous. The Section clearly lists the available means of notice in the disjunctive and provides that "notice shall be deemed to be properly served" if delivered "by one or more" of the methods listed. Phila. Admin. Code § A-502.4.

Plaintiffs' next contention is more substantial, but we conclude, insufficient to create a genuine issue on whether they received constitutionally inadequate notice. It is undisputed that the L&I records do not contain the certified return cards from the 2003 notice. At oral argument, the Plaintiffs argued that proof of notice by certified mail return cards is the constitutional standard the City must meet. We hold that the absence of the return cards does not establish the contention that the Plaintiffs did not receive constitutionally adequate notice.

The Supreme Court "has never employed an actual notice standard in its jurisprudence. Rather, its focus has always been on the procedures in place to effect notice." United States v. One Toshiba Color Television, 213 F.3d 147, 155 (3d Cir. 2000). The methods listed in § A-502.4 are methods reasonably calculated to notify property owners of imminently dangerous conditions to their property. It is not necessary that Plaintiffs actually receive notice; it is sufficient that the City used methods reasonably designed to notify them. No case, to the Court's knowledge, has ever held that certified mail is the only acceptable method a municipality may employ to afford constitutionally adequate notice.

Most significantly, Plaintiffs admit they had actual notice of the pending demolitions when

they visited the properties in March 2005 and saw the markings on the buildings. Those markings actually alerted them to the existence of a problem with their properties sufficient for them to contact the City. They were then told of the pending demolitions and advised of the action they could take – filing a court injunction – to stop the City from proceeding. Rather than pursuing their judicial remedies, they did nothing other than send a letter. As the Plaintiffs had actual notice prior to the demolitions, they have no procedural due process claim based on inadequate notice procedures.

Plaintiffs also assert the L&I records do not contain pictures of the posted violation notices on their premises in 2003. This contention is also not supported by the record. The L&I files contain photos of postings on each property, albeit the date on the 28 North 59th Street poster is March 1, 2005, while the date on the notices posted on Number 29 and Number 30 is contemporaneous with the violation notices, November 13, 2003. Defendant Evans established that properties are often reposted because notices are removed or fall off due to weather conditions. No counter evidence has been offered by the Plaintiffs. As they had actual notice prior to the demolitions, any defect in posting the properties was harmless.

Finally, they argue that the City has produced no evidence to show that the Plaintiffs were given an opportunity to appeal the demolition order. At oral argument, Plaintiffs specified that, as they never received the violation notices, they were denied the ability to pursue an administrative appeal because such an appeal had to be filed within five days of receiving the notice. We find that the Plaintiffs were not unconstitutionally denied their appeal rights. It is undisputed that Mr. El Malik was told by both Norman Mason and Daniel Quinn that the Plaintiffs could still appeal the demolition order by filing for an injunction in Common Pleas Court. Had Plaintiffs followed this advice, they would have had a forum to appeal the violations and the demolition order. They have

produced no contrary evidence showing a genuine issue of material fact that the City somehow prevented them from taking this action.

Accordingly, we conclude that the Defendants are entitled to summary judgment on the procedural due process claim. Plaintiffs have failed to come forward with evidence to demonstrate a genuine issue of fact that the City failed to use methods reasonably designed to notify them of the impending demolition of their properties.

V. CONCLUSION

For the reasons stated, we grant the Defendants' motion for summary judgment on the Plaintiffs' claims for violation of their substantive and procedural due process rights. Given this conclusion, we need not reach the City's argument that the Plaintiffs have failed to come forward with sufficient evidence to demonstrate a claim under Monell v. New York City Dep't. Of Soc. Servs., 436 U.S. 658 (1978), or that the individual Defendants are entitled to qualified immunity under Harlow v. Fitzgerald, 457 U.S. 800 (1982). An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

RASHID EL MALIK,
ROSALIND EL MALIK

v.

CITY OF PHILADELPHIA, ET AL.

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CIVIL ACTION

NO. 06-1708

ORDER

AND NOW, this day of March, 2007, upon consideration of Plaintiffs' undocketed Motion for Summary Judgment dated February 23, 2007, Defendants' Motion for Summary Judgment (Docket Entry # 27), all responses thereto, and oral argument conducted on March 23, 2007, **IT IS HEREBY ORDERED** as follows:

1. The Clerk is **DIRECTED** to file of record Plaintiffs' Motion for Summary Judgment dated February 23, 2007.
2. Plaintiffs' Motion for Summary Judgment dated February 23, 2007 is **DENIED**.
3. Defendants' Motion for Summary Judgment is **GRANTED**. Judgment is **ENTERED** in favor of all Defendants and against Plaintiffs Rashid El Malik and Rosalind El Malik.
4. The Clerk is directed to **CLOSE** this case statistically.

BY THE COURT:

John R. Padova, J.